

Regular Session, 2009

HOUSE BILL NO. 244

BY REPRESENTATIVE ROY

Filed pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Amends provisions of law regarding drug court

1 AN ACT

To amend and reenact R.S. 13:5304(B)(3)(f), R.S. 15:574.4.1(B) and Code of Criminal Procedure Article 900(A)(6)(a) and (b) and to enact R.S. 15:574.4.1(A)(6) and (J) and Code of Criminal Procedure Article 900(A)(6)(c)(introductory paragraph), relative to the drug division probation program; to authorize the court to order that a defendant who has been placed on probation by the drug division probation program, and who has had his probation revoked for a technical violation, be committed to the custody of the Department of Public Safety and Corrections and be required to serve in the intensive incarceration program; to provide for the period of time the defendant may be sentenced to intensive incarceration; to provide that upon successful completion of intensive incarceration the defendant shall return to active, supervised probation with the drug division probation program; to provide for applicability; to provide for resentencing when a defendant is denied entry into the intensive incarceration program; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16           Section 1. R.S. 13:5304(B)(3)(f) is hereby amended and reenacted to read as  
17 follows:

§5304. The drug division probation program

[9] \* \* \*

20 B. Participation in probation programs shall be subject to the following  
21 provisions:

22 \* \* \*

(3) In offering a defendant the opportunity to request treatment, the court shall advise the defendant of the following:

\* \* \*

(f) If the defendant completes the drug division probation program, and successfully completes all other requirements of his court-ordered probation, the conviction may be set aside and the prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Articles 893 and 894. If the defendant was sentenced at the time of the entry of the plea of guilty, the successful completion of the drug division probation program and the other requirements of probation will result in his discharge from supervision. If the defendant does not successfully complete the drug division probation program, the judge may revoke the probation and impose sentence, or the judge may revoke the probation and order the defendant to serve the sentence previously imposed and suspended, or the judge may revoke the probation and order the defendant to be committed to the custody of the Department of Public Safety and Corrections and be required to serve a sentence of not more than six months without diminution of sentence in the intensive incarceration program pursuant to R.S. 15:574.4.1, or the court may impose any sanction provided by Code of Criminal Procedure Article 900, and extend probation and order that the defendant continue treatment for an additional period, or both.

\* \* \*

Section 2. R.S. 15:574.4.1(B) is hereby amended and reenacted and R.S. 15:574.4.1(A)(6) and (J) are hereby enacted to read as follows:

§574.4.1 Parole; intensive parole supervision; eligibility

A.

\* \* \*

(6) The court sentences an offender in the drug division probation program pursuant to R.S. 13:5304.

B. Notwithstanding the provisions of R.S. 15:574.4(A)(1), an offender who is otherwise eligible for intensive incarceration and intensive parole supervision, but

who has not been recommended for participation in the intensive incarceration and intensive parole supervision program by the division of probation and parole of the ~~office of adult services and~~ or the sentencing judge, as provided for in Paragraphs (A)(2) and (3) of this Section, may additionally be placed in the intensive incarceration and intensive parole supervision program if all of the following conditions are met:

\* \* \*

J. In cases in which the court sentences a defendant in the drug division probation program for a technical violation of probation, the offender will return to active supervised probation with the drug division probation program for a period as ordered by the court, subject to any additional conditions imposed by the court.

Section 3. Code of Criminal Procedure Article 900(A)(6)(a) and (b) are hereby amended and reenacted and Code of Criminal Procedure Article 900(A)(6)(c)(introductory paragraph) is hereby enacted to read as follows:

## Art. 900. Violation hearing; sanctions

A. After an arrest or service of a summons pursuant to Article 899, the court shall cause the defendant to be brought before it within ten days for a hearing. The hearing may be informal or summary. If the court decides that the defendant has violated, or was about to violate, a condition of his probation it may:

\* \* \*

(6)(a) Notwithstanding the provisions of Subparagraph (A)(5) of this Article, any defendant who has been placed on probation by the drug division probation program pursuant to R.S. 13:5304, and who has had his probation revoked under the provisions of this Article for a technical violation of drug division probation as determined by the court, may be ordered to be committed to the custody of the Department of Public Safety and Corrections and be required to serve a sentence of not more than six months without diminution of sentence in the intensive incarceration program pursuant to the provisions of R.S. 15:574.4.1. Upon successful completion of the program, the defendant shall return to active, supervised

1 probation with the drug division probation program for a period of time as ordered  
2 by the court, subject to any additional conditions imposed by the court and under the  
3 same provisions of law under which the defendant was originally sentenced. If an  
4 offender is denied entry into the intensive incarceration program for physical or  
5 mental health reasons or for failure to meet the department's suitability criteria, the  
6 department shall notify the sentencing court for resentencing in accordance with the  
7 provisions of the Code of Criminal Procedure Article 881.1.

(a) (b) Notwithstanding the provisions of Subparagraph (A)(5) of this Article, any defendant who has been placed on probation by the court for the conviction of an offense other than a crime of violence as defined in R.S. 14:2(B) or of a sex offense as defined in R.S. 15:541(14.1), and who has had his probation revoked under the provisions of this Article for his first technical violation of his probation as determined by the court, shall be required to serve a sentence of not more than ninety days without diminution of sentence or credit for time served prior to the revocation for a technical violation. The term of the revocation for a technical violation shall begin on the date the court orders the revocation. Upon completion of the imposed sentence for the technical revocation, the defendant shall return to active and supervised probation for a period equal to the remainder of the original period of probation subject to any additional conditions imposed by the court. The provisions of this Paragraph shall apply only to the defendant's first revocation for a technical violation.

(b) (c) A "technical violation", as used in this Paragraph, means any violation except it shall not include any of the following:

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Roy

HB No. 244

**Abstract:** Authorizes the court to sentence a defendant to intensive incarceration for a technical violation of the drug division probation program.

Present law provides for the drug division probation program (drug court).

Present law provides for intensive incarceration under DPS&C (IMPACT program).

Proposed law retains these provisions of present law.

Proposed law further provides that any defendant who has been placed on probation by the drug division probation program, and who has had his probation revoked for a technical violation of drug division probation as determined by the court, may be ordered to be committed to the custody of DPS&C and be required to serve a sentence of not more than six months without diminution of sentence in the intensive incarceration program.

Proposed law further provides that upon successful completion of the program, the defendant shall return to active, supervised probation with the drug division probation program for a period of time as ordered by the court, subject to any additional conditions imposed by the court and under the same provisions of law under which the defendant was originally sentenced. If an offender is denied entry into the intensive incarceration program for physical or mental health reasons or for failure to meet the department's suitability criteria, the department shall notify the sentencing court for resentencing.

(Amends R.S. 13:5304(B)(3)(f), R.S. 15:574.4.1(B) and C.Cr.P. Art. 900(A)(6)(a) and (b); Adds R.S. 15:574.4.1(A)(6) and (J) and C.Cr.P. Art. 900(A)(6)(c)(intro. para.))